REMARKS

Claims 1, 2, 4, 6, 7, 16, 22, and 45-48 are pending. Claim 1 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent Nos. 6,269,348; 5,870,723; and 5,838,812. Claims 2, 4, 6, and 7 stand rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 16, 22, and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,546,471 to Merjanian. Claims 2, 4, 6, 7, and 45-48 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,546,471 to Merjanian in view of U.S. Patent No. 6,496,107 to Himmelstein

Reconsideration is requested. The rejections are traversed. No new matter is added. Claims 1, 2, 4, 6, 7, 16, 22, and 45-48 remain in the case for consideration.

DOUBLE PATENTING REJECTION

The Applicant is prepared to submit a terminal disclaimer to overcome the double-patenting rejection when the claims are otherwise allowable.

REJECTION UNDER 35 U.S.C. § 112, ¶ 2

The Examiner rejected claims 2, 4, and 6-7 as indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. The Examiner indicated it was unclear whether the code was an additional biometric or the only biometric. The Applicant suggests that the Examiner has misread the claims. The specification describes the personal identification code as something other than a biometric: for example, an alphanumeric string (*see, e.g.*, specification, page 26, lines 5-9; page 29, lines 23-24).

The Applicant further does not understand the Examiner's comment that "it is unclear in claim 6 just how other codes get compared as there can be just one code for one supporter". While it is true that a user has only one personal identification code at a time (although the user can change the personal identification code, if desired), there is no limitation that a user can have only one biometric. Further, the Applicant does not understand how it can be unclear "how other codes get compared": such comparison is well described and understood. Accordingly, the Applicant believes the claims are not indefinite, and are allowable under 35 U.S.C. § 112, ¶ 2.

REJECTION UNDER 35 U.S.C. § 103(a)

In responding to the Office Action dated November 22, 2005, the Applicant provided arguments as to why the claimed invention was patentable over the art of record. In the Office Action dated May 15, 2006, the Examiner has not responded to these arguments. According to MPEP § 707.07(f), "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." The Applicant respectfully suggests that the Examiner has failed to provide a complete Office Action. The arguments are restated here for the Examiner's benefit.

Merjanian does not teach a scrip supporter, scrip donator, and scrip beneficiary, and food stamps are not equivalent to electronic scrip

Claim 1 mentions a scrip supporter, a scrip donator, and a scrip beneficiary. The scrip supporter provides the bid biometric sample, whereas the credit for the transaction is credited to an account of the scrip beneficiary. As defined in the specification, "[a] Scrip Supporter is any individual person who participates in a program to donate scrip to a non-profit entity based upon his purchases, expenditures, or service usages" (*see* page 14, lines 12-14). The scrip donator is a party controlling the scrip donator account (*see* page 13, lines 26-28), which is the account debited as a result of the transaction. The scrip donator can be either the scrip supporter or the scrip merchant. Finally, the scrip beneficiary is the entity that receives donations (*see* page 14, lines 9-11). Nowhere does Merjanian teach or suggest any of these concepts.

In rejecting the claims, the Examiner cited to the example of a user of food stamps or health account credits as inherently using electronic scrip. The Applicant points out that using Merjanian does not teach or suggest a scrip supporter, scrip donator, and scrip beneficiary as required under claim 1: Merjanian certainly does not teach all three concepts. For the same reason, the example of a person seeking benefits under programs such as welfare or Medicaid, as described in column 11 of Merjanian, fails to teach the features of the claimed invention.

The Examiner suggests that terms such as "donator" and "supporter" are "met by the Medicaid embodiment of Merjanian without recitation of contrary definitions in the claims" (*see* Office Action dated May 15, 2006, page 4). The Applicant respectfully points out that the Examiner has not suggested that Merjanian teaches the concept of a "scrip beneficiary", which is

a concept that is distinct from the "scrip donator" and "scrip supporter" terms. With reference to the Examiner's suggestion that the claims do not recite contrary definitions, the Applicant points out that the definitions of the terms in question do not need to be recited in the claims, provided they are included in the specification. As the definitions of all three terms are clearly recited in the specification, the Applicant's definitions of the terms should be recognized, as described in MPEP § 608.01(o). Accordingly, claims 1-2, 4, 6-7, 16, 22 and 45-48 are patentable under 35 U.S.C. § 103(a) over Merjanian, with or without Himmelstein, and are therefore allowable.

Merjanian does not teach or suggest a tokenless system

The Examiner argues that Merjanian teaches a tokenless system, and refers to column 11 of Merjanian as disclosing a system that does not involve a smart card, and therefore is "tokenless". The Applicant points out that at column 10, lines 19-22, where Merjanian discusses food stamps, actually teaches away from a tokenless system. Merjanian says that "[t]he card reader can be replaced by other data extracting means, such as a scanning wand, for extracting information from . . . food stamps". In other words, the food stamps have to be paper coupons or other physical objects that can be read by the "data extracting means", be that means a scanning wand, a card reader, or the like. Because the food stamps have to be physical objects in Merjanian, and because they have to be presented at the point-of-sale to be read by the data extracting means, food stamps as intended by Merjanian are tokens. In contrast, the claimed invention is directed toward a tokenless method, namely where the transaction is performed without presenting tokens. Since Merjanian requires the presentation of a token, Merjanian cannot teach or suggest the claimed invention.

The Examiner also previously cited to column 11, lines 1-21 as teaching a tokenless operation. The Applicant notes that this section describes a user's enrollment with the system, and not a user's attempt to perform a transaction. As the Examiner has cited elsewhere, column 10 of Merjanian describes performing a transaction at a point of purchase terminal, where a token would or would not be presented. As discussed above, Merjanian teaches the presentation of a token. So this section of Merjanian also fails to teach or suggest the claimed invention. Accordingly, claims 1-2, 4, 6-7, 16, 22 and 45-48 are patentable under 35 U.S.C. § 103(a) over Merjanian, with or without Himmelstein, and are therefore allowable.

In contrast with previous Office Actions, the Examiner has cited a new secondary reference in Himmelstein in rejecting some of the dependent claims. Even though the dependent claims should be allowable as dependent from claim 1 (rejected only over Merjanian and argued above as allowable), the Applicant believes Himmelstein does not teach the features to which the Examiner attributes it. Accordingly, below are arguments as to why claims 2, 4, 6-7, and 45-48 are allowable over Merjanian in view of Himmelstein. In these arguments, the Applicant asserts that neither Merjanian nor Himmelstein teach any features other than those the Examiner asserts they respectively teach.

Himmelstein does not teach a tokenless system

Himmelstein teaches a system for voice-controlled vehicles and other objects. The system relies on the combined recognition of certain users and the detected proximity of a radio transponder unit. "The transponder unit is preferably incorporated into a plastic card, such as a credit card, but can also be incorporated in a wristband, watch, wallet or piece of jewelry" (*see* Himmelstein, column 1, lines 54-57). The system also stored templates of authorized users reciting specific commands (*see* Himmelstein, column 3, lines 50-52). When the system both identifies a voice command as matching one of the stored templates and detects a transponder unit within range, the system can execute the command (*see* Himmelstein, column 2, lines 5-7).

Because Himmelstein depends on a physical device, namely the transponder unit, Himmelstein cannot be said to be a tokenless system as claimed. The transponder unit is required by Himmelstein, since the requested function is not performed unless both the voice command matches a stored template and the transponder signal transmits a valid identification code. As argued above, Merjanian does not teach a tokenless system either. Therefore, the combination of Merjanian and Himmelstein does not teach or suggest a tokenless system. Claims 2, 4, 6, 7, and 45-48 are therefore patentable under 35 U.S.C. § 103(a) over Merjanian in view of Himmelstein, and are therefore allowable.

Even if Merjanian could arguably be considered a tokenless system (which, as argued above, the Applicant disputes), Himmelstein teaches away from the proposed combination with Merjanian. As discussed above, Himmelstein requires the use of a transponder, which is a token. Himmelstein makes it clear that the system does not execute the command unless both the voice command and the transponder are approved (*see* Himmelstein, column 2, lines 5-6). As

Himmelstein requires a physical token, Himmelstein teaches away from the concept of a tokenless system. Claims 2, 4, 6, 7, and 45-48 are therefore patentable under 35 U.S.C. § 103(a) over Merjanian in view of Himmelstein, and are therefore allowable

Himmelstein does not teach the use of a personal identification code associated with biometrics

The Examiner asserts that "Himmelstein discloses the use of both an ID code and physical biometrics" (*see* Offiee Action dated May 15, 2006, page 4). But Himmelstein does not teach associating the biometrics with a personal identification code, as claimed in claims 4, 46, and 48. For example, in the system of Himmelstein, it would be possible for one user to have the transponder, and another user to provide the voice command. The system would recognize that both conditions are met to execute the function, but there is no association between the identification code of the transponder and the templates in the memory of the system. Similarly, Merjanian does not teach or suggest any such association. As neither Merjanian nor Himmelstein teaches of suggests an association between a personal identification code and biometrics, claims 4, 46, and 48 are patentable under 35 U.S.C. § 103(a) over Merjanian in view of Himmelstein. Accordingly, claims, 4, 46, and 48 are allowable, as is dependent claim 6.

For the foregoing reasons, reconsideration and allowance of claims 1-2, 4, 6-7, 16, 22, and 45-48 of the application as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,
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